

COMMONWEALTH OF KENTUCKY
CITY OF LONDON, KENTUCKY
ORDINANCE NO. 2007-14

AN ORDINANCE REGULATING THE SITING OF WIRELESS TELECOMMUNICATIONS
FACILITIES

Be it ordained by the City of London, Kentucky:

Chapter 65 in the City of London Code of Ordinances sections 65.001 through (and including) section 65.025 are hereby repealed.

ARTICLE I. GENERAL PROVISIONS

§ 65.001 PURPOSE AND LEGISLATIVE INTENT

The Telecommunications Act of 1996 affirmed the City of London's authority concerning the placement, construction and modification of wireless telecommunications facilities, which authority is limited by state legislation. In order to ensure that the placement, construction or modification of wireless telecommunications facilities is consistent with the applicable law, the city is adopting a single, comprehensive wireless telecommunications facilities application and permit process. The intent of this is, to the extent permitted by law, to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities and protect the health, safety and welfare of the city.

§ 65.002 TITLE

This chapter shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance in the City of London Code of Ordinances.

§ 65.003 SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, part, section, subsection, or other portion or the proscribed application thereof shall be severable and the remaining provisions of this chapter and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

§ 65.004 DEFINITIONS

For the purpose of this chapter the following definitions shall apply unless the context indicates or clearly requires a different meaning.

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“ANTENNAS OR RELATED EQUIPMENT.” Transmitting, receiving or other equipment -used to support cellular telecommunications service or personal communications service. This definition does not include towers.

“CELLULAR ANTENNA TOWER.” A tower constructed for or an existing facility that has been adapted for the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services.

“CELLULAR TELECOMMUNICATION SERVICE.” A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

“CO-LOCATION.” Locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.

“PERSONAL COMMUNICATION SERVICE.” This phrase has the meaning as defined in 47 U.S.C. 332(c);

“UNIFORM APPLICATION.” An application to construct a cellular antenna tower submitted to the Planning Commission in conformity with KRS 100.985 (3) and (5).

“UTILITY.” This term has the meaning as defined in KRS 278.010(3).

ARTICLE II APPLICATION AND REVIEW PROCESS

§ 65.020 APPLICATION PROCESS

(A) Every utility or a company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within the City of London must:

(1) Submit a copy of the applicant’s completed uniform application to construct an antenna tower for cellular or personal telecommunications services to the Planning Commission. The uniform application shall:

(a) Include a grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes all of the planning unit’s jurisdiction and a one-half (1/2) mile area outside of the boundaries of the planning unit’s jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;

(b) Include in any contract with an owner of property upon which a

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cellular antenna tower is to be constructed a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower including a timetable for removal; and

(c) Comply with any local ordinances concerning land use subject to the limitations imposed by 47 U.S.C. 332(c), KRS 278.030, 278.040 and 278.280.

(2) An application shall also include:

(a) The full name and address of the applicant;

(b) The applicant's articles of incorporation, if applicable;

(c) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs and foundation design recommendations;

(d) A written report prepared by a professional engineer or land surveyor of findings as to the proximity of the proposed site to flood hazard areas;

(e) Clear directions from the county seat to the proposed site, including highway numbers and street names if applicable, with the telephone number of the person who prepared the directions;

(f) The lease or sale agreement for the property on which the tower is proposed to be located except that, if the agreement has been filed in abbreviated form with the County Clerk, an applicant may file a copy of the agreement as recorded by the County Clerk and, if applicable, the portion of the agreement demonstrating compliance with KRS 100.987(2);

(g) The identity and qualifications of each, person directly responsible for the design and construction of the proposed tower;

(h) A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system;

(I) A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;

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(j) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed and sealed by a professional engineer registered in Kentucky;

(k) A map drawn to a scale no less than one (1) inch equals two hundred (200) feet that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower;

(l) A statement that every person who according to the records of the property valuation administrator owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:

1. Notified by certified mail, return receipt requested, of the proposed construction, which notice shall include a map of the location of the proposed construction;

2. Given the telephone number and address of the local Planning Commission; and

3. Informed of his or her right participate in the Planning Commission's proceeding on the application.

(m) A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners;

(n) A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified in writing of the proposed construction;

(o) A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies;

(p) A statement that:

1. A written notice, of durable material at least two (2) feet by four (4) feet in size stating that "(Name of applicant) proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the Planning Commission has been posted and shall remain a visible location on the proposed Site until final disposition of the application;

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2. A written notice, at least two (2) feet by four (4) feet in size, -stating that “(Name of applicant) proposes to construct a telecommunications tower near this site” and including the addresses and telephone numbers of the applicant and the Planning Commission has been posted on the public road nearest the site;

(q) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed;

(r) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;

(s) A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers’ facilities or on an existing structure such as a telecommunication tower or other suitable structure capable of supporting the applicant’s antennas and related facilities;

(t) A map of the area in which the tower is proposed to be located that is drawn to scale and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located;

(u) *A copy of the applicant's FCC license, or, if the applicant is not an FCC license holder, a copy of at least one letter of commitment from an FCC license holder to locate at least one antenna on the applicant's tower;*

(v) *Radio frequency requirements, as follows:*

1. *General coverage area, including overlap ("hand-off") area with other sites;*

2. *Specific (targeted) coverage area(s) and required field*

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strength(s);

3. *System specifications of the proposed site and adjoining sites, including:*
 - a. *Number of antennas and sectors.*
 - b. *Model and manufacturer of antennas.*
 - c. *Antenna specifications, including horizontal and vertical beamwidth, gain, downtilt (electrical and mechanical), and horizontal and vertical radiation patterns;*
 - d. *Orientation (azimuth) of antennas and sectors, in degrees, including reference to true north;*
 - e. *Effective radiated power (ERP) of each antenna;*
 - f. *Transmission line size and number;*
 - g. *Geographical coordinates of tower location;*
 - h. *Height of the antenna center of radiation, above ground level and above mean sea level;*
 - i. *Frequency or frequency band(s) of operation used by the provider for coverage analysis;*
4. *Search "ring" area used by the provider to locate the site;*
 - (w) *Unless co-locating, certification, supported by evidence, that co-location of the proposed facility with an existing approved tower or facility cannot be accommodated. The applicant's certification shall include a listing of all existing towers and facilities within a two (2) mile radius of the proposed tower location, a description of each existing site, and a discussion of the ability or inability to co-locate on each existing site, according to the following:*
 1. *No existing towers or facilities are located within a two (2) mile radius of the proposed tower location;*
 2. *Existing towers or facilities are not of sufficient height to meet the applicant's engineering requirements;*
 3. *Existing towers or facilities do not have sufficient structural strength to support the applicant's proposed antenna(s) or related equipment;*

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4. *The applicant's planned equipment would cause frequency interference with other existing or planned equipment of the tower of facility, or the existing or planned equipment of the tower or facility would cause frequency interference with the applicant's planned equipment, and which cannot be reasonably prevented.*

5. *Unwillingness of the owner/owners of the existing tower/towers or facility/facilities to entertain a co-location proposal.*

6. *Existing towers are not located within a reasonable distance to provide the necessary coverage.*

(x) *Unless co-locating, certification, supported by evidence, that the proposed site is appropriate for the location of the facility. The applicant's certification shall include a listing of at least three (3) potential sites within a one (1) mile radius of the proposed tower location, a description of each potential site, and a discussion of the ability or inability of the site to host such a facility, according to the following:*

1. *Unwillingness of the site owner(s) to entertain such a facility;*

2. *Topographic limitations of the site;*

3. *Adjacent impediments that would obstruct adequate transmission;*

4. *Physical site constraints that would preclude the construction of such a facility;*

(y) *A development plan, signed and sealed by a professional engineer registered in Kentucky, drawn to a scale not smaller than one (1) inch equals one hundred (100) feet, showing the following information, where applicable:*

1. *The total area of the site in question;*

2. *All public and private rights-of-way and easement lines located on or adjacent to the subject property which are proposed to be continued, created, enlarged, relocated, or abandoned;*

3. *Existing topography, and approximate delineation of any topographical changes shown by contour with intervals not to exceed five (5) feet;*

4. *Location, height, arrangement, and identification of all*

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nonresidential buildings, structures, and uses on the subject property and, where applicable,

location and arrangement of all lots with lot dimensions;

5. *Location and arrangement of all common open space areas, and methods of ownership and operation and maintenance of such lands shall be identified;*

6. *Landscaping features, including identification of planting areas and the location, type, and height of walls and fences;*

7. *Location of signs, indicating their orientation, size, and height;*

8. *All utility lines and easements;*

a. *Water distribution systems, including line sizes, width of easements, type of pipe, location of hydrants and valves, and other appurtenances;*

b. *Sanitary sewer system, including pipe sizes, width of easements, gradients, type of pipes, invert elevations, location and type of manholes, the location, type, size of all lift or pumping stations, capacity, and process of any necessary treatment facilities, and other appurtenances;*

c. *Storm sewer and natural drainage system, including pipe and culvert sizes, gradients, location of open drainage courses, width of easements, location and size of inlets and catch basins, location and size of retention and/or sedimentation basins;*

d. *Other utilities (e.g., electric, telephone, etc.) including the type of service and the width of easements;*

9. *Location of all off-street parking, loading and/or unloading, and driveway areas, including typical cross sections, the type of surfacing, dimensions, and the number and arrangement of off-street parking and loading and/or unloading spaces;*

10. *Circulation System:*

a. *Pedestrian walkways, including alignment, grades, type of surfacing, and width;*

b. *Streets, including alignment, grades, type of surfacing, width of pavement and right-of-way, geometric details, and typical cross sections;*

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11. *Provisions for control of stormwater detention/retention, erosion, hillside slippage and sedimentation, indicating the temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction;*

(z) *The applicant shall provide information demonstrating compliance with the following requirements. Where the Commission finds that circumstances or conditions relating to the particular application are such that one or more of the requirements listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Commission may modify or waive such requirement, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver.*

1. *All structures, except fences, shall be located a minimum distance from the property line or lease line of any adjoining property that is equal to one-half (2) the height of the tower, but not less than fifty (50) feet;*

2. *A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of 100 feet regardless of the maximum height requirements listed in other specific ordinances or regulations. This also applies to any tower taller than fifteen (15) feet constructed on the top of another building or structure, with the height being the overall height of building/structure and tower together, measured from the grade to the highest point. The planning commission may allow antennas greater than 100 feet in height upon review of the applicant's justification that the additional height meets the criteria identified in other subsections herein (regarding colocation, zoning compliance, comprehensive plan agreement, etc.);*

3. *Woven wire or chain link (eighty (80) percent open) or solid fences made from wood or other materials (less than fifty (50) percent open) shall be used to enclose the site. Such fences shall not be less than 6 feet in height nor more than 10 feet in height. The use of barbed wire or sharp pointed fences shall be prohibited.*

4. *All new cellular antenna towers shall be designed and*

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constructed to accommodate a minimum of three (3) service providers.

5. *All option and site lease agreements shall not prohibit the possibility of co-location.*

6. *Screening shall be provided by evergreen trees, with a minimum height of six (6) feet, planted in a staggered pattern at a maximum distance of fifteen (15) feet on center. The screening shall to be placed in an area between the property line, or lease line, and a ten (10) foot setback.*

(B) All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed shall be deemed confidential and proprietary within the meaning, of KRS 61.878. The local planning, commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent-jurisdiction. Any person violating this -subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.

From the time that a uniform application is received by the Commission, all information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The planning commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction, or when and to the extent that confidentiality is waived in writing by the applying utility OR the applicant. The planning commission will request that the applicant waive confidentiality on the contents of the uniform application, with the exception of any information that indicates the general position of future proposed construction sites for new cellular antenna towers as discussed herein, and will request that the applicant provide in some separate format (e.g., in a separate set of documents) all information for which confidentiality has not been waived (for purposes of excluding dissemination.)

(C) Any towers that exist as of the date this chapter was enacted may be replaced in

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 the same structural form as the tower presently exists. Preference and encouragement in replacement situations shall be given in replacement situations to monopole or lattice-type structures. Any new tower shall be either monopole or lattice-type structures.

(D) No guyed towers shall be allowed in new tower construction. No guyed tower replacements shall be allowed except for guyed tower structures being replaced.

§ 65.021 REVIEW PROCESS

(A) After an applicant's submission of the uniform application to construct a cellular antenna tower, the Planning Commission shall:

(1) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;

(2) Make its final decision to approve or disapprove the uniform application;
 and

(3) Advise the applicant in writing of its final decision within sixty (60) days commencing from the date that the uniform application is submitted to the Planning Commission or within a date certain specified in a written agreement between the local Planning Commission and the applicant.

(B) If the Planning Commission fails to issue a final decision within sixty (60) days and if there is no written agreement between the local Planning Commission and the applicant to a specific date for the Planning Commission to issue a decision, the uniform application shall be deemed approved.

(C) If the Planning Commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the Planning Commission approves the uniform application or the sixty (60) day time period has expired whichever occurs first.

(D) The Planning Commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. A Planning Commission may provide the location of existing cellular antenna towers on which the commission deems the applicant can successfully co-locate its transmitting and related equipment. If the local Planning Commission

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requires the applicant to attempt co-location, the applicant shall provide the local planning unit with a statement indicating that the applicant has:

(1) Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that identifies the location of the tower or suitable structure on which the applicant will co-locate its transmission and related facilities; or

(2) Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:

(a) Identifies the location of the towers or other structures on which the applicant attempted to co-locate; and

(b) Lists the reasons why the co-location was unsuccessful in each instance.

(E) The Planning Commission may deny a uniform application to construct a cellular antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers or other structures.

(F) In the event of co-location, a utility shall be considered the primary user of the tower if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.

(G) Upon the approval of an application for the construction of a cellular antenna tower by a Planning Commission, the applicant shall notify the Public Service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.

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In regulating the placement of cellular antenna towers, the Planning Commission shall not:

(A) Regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that these facilities comply with the regulations of the Federal Communications Commission concerning radio frequency emissions;

(B) Institute a moratorium upon the siting of cellular antenna towers;

(C) Charge an application fee that exceeds an amount that is reasonably related to expenses associated with processing application to construct a cellular antenna tower up to a maximum of two thousand five hundred dollars (\$2,500.00);

(D) Regulate the placement of antennas or related equipment on an existing cellular tower structure;

(E) Require the submission of application materials in addition to those required by KRS 100.985 (3) and (5).

§ 65.023 APPEAL


A party aggrieved by a final action of a Planning Commission under the provisions of KRS 100.985 to 100.987 may bring an action for review in any court of competent jurisdiction.

§ 65.024 CONFLICT WITH OTHER LAWS

Where this chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the city, commonwealth or federal government, this chapter shall apply.

§ 65.025 AUTHORITY

This chapter is enacted pursuant to applicable authority granted by the Commonwealth and federal government.



 Troy Rudder, Mayor

Attested:


 Connie McKnight, City Clerk

First Reading: September 4, 2007
 Second Reading: October 1, 2007
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